

REMARKS/ARGUMENTS

Pursuant to the provisions of Manual of Patent Examining Procedure §713.04, the substance of the telephonic interview conducted on October 16, 2006 follows.

The Examiner informed Applicants' attorney in the interview that Applicants' argument regarding the 35 U.S.C. §112, first paragraph, outstanding rejection would only be acceptable if placed in the form of a Rule 132 declaration. As for the outstanding obviousness rejections which are based on the two Zeller et al. patents, U.S. Patent No. 6,569,954 and U.S. Patent No. 6,569,377, as primary references, Applicants' proposal to incorporate the subject matter of existing claims 13, 14, and 27 within existing independent claim 4, would, in her opinion, be insufficient to overcome the references due to the insufficiently narrow added feature of "up to forty minutes" in independent claim 4. She contends that this feature includes the feature of up to ten minutes disclosed by the Zeller et al. patents. In short, the proposed amendment would not overcome the final rejection.

The Examiner noticed that both the references applied, and Applicants' application appear to have the same assignee, and suggested that Applicants' application can be said to have an effective date back to September 27, 2001, based on the priority Austrian application, a PCT application intervening and being the parent of Applicants' continuation U.S. application. Applicants' attorney raised the question of the effect of an international application filed in 1998 which is the first application on which the references are based, but the Examiner could not answer this question.

Applicants' attorney explored this alternative further with the Examiner. She said that if Applicants could overcome the §103(a) rejections (all of which are based on the Zeller et al. patents as primary references) through use of §103(c), if Applicants could also overcome the §112, first paragraph, rejection by use of a Rule 132 declaration, and if Applicants overcome the outstanding double patenting rejection by amending independent claim 4, as proposed by Applicants, to incorporate the subject matter of existing dependent claims 13, 14, and 27 in independent claim 4, claims 13, 14, and 27 not being subject to the double patenting rejection, she could allow the case without a new application being filed.

Applicants have followed the advice of the Examiner set forth in the preceding paragraph, as will become apparent from the following remarks, with one exception. Insofar as the rejections herein rely on Zeller et al., U.S. Patent No. 6,569,377, that reference is sought to be withdrawn, based on the filing date of the Austrian priority document herein, a certified English translation of which is filed herewith, instead of relying on the use of 35 U.S.C. §103(c), as advised by the Examiner.

Claims 1-39 were rejected under 35 U.S.C. §112, first paragraph, for allegedly failing to comply with the written description requirement. Reconsideration of the rejection is respectfully requested.

The Examiner alleges, in support of the rejection, that, “[p]age 8 lines 25-29 of the specification support a reducing gas without oxygen being added to reactor 4 (first reactor in gas pathway), however does not support a reducing gas without oxygen in the final reactor in the gas pathway,” (Office Action, page 2). Applicants respectfully disagree.

In particular, from the teaching that a reducing gas without oxygen is supplied to the first gas pathway reactor, it implicitly follows that an oxygen-free reducing gas is also added to the first particulate pathway reactor, since the reducing gas is led countercurrently to the particulate material from the first reaction zone to the last reaction zone in the gas pathway without any addition or external changes, (see specification and figures). As the reactions taking place in the reaction zones do not generate oxygen, (see the reactions on pages 1 and 2 of the specification), Applicants respectfully submit that, on entering the final gas pathway reaction zone, the reducing gas cannot suddenly contain oxygen.

Pursuant to the suggestion of the Examiner in a telephonic interview conducted on October 16, 2006, (see further details above), a Declaration under 37 C.F.R. §1.132 is enclosed, attesting to the allegations made in the previous paragraph in order to overcome the 35 U.S.C. §112, first paragraph, rejection.

Claims 15 and 16 were rejected under 35 U.S.C. §112, second paragraph. Reconsideration of the rejection is respectfully requested.

Claims 15 and 16 have been canceled, without prejudice or disclaimer. Therefore, the rejection has been overcome.

Claims 1-10, 13-26, and 31-39 were rejected under 35 U.S.C. §103(a) as being unpatentable over Zeller et al., U.S. Patent No. 6,569,954 or Zeller et al., U.S. Patent No. 6,569,377. Reconsideration of the rejection is respectfully requested.

Claims 11-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Zeller et al. ('954) or Zeller et al. ('377) as applied to claims 4 and 1 above and further in view of Meissner et al., U.S. Patent No. 6,488,770. Reconsideration of the rejection is respectfully requested.

Claims 27 and 28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Zeller et al. ('954) or Zeller et al. ('377) as applied to claims 4 and 1 above and further in view of Whipp, U.S. Patent No. 5,082,251. Reconsideration of the rejection is respectfully requested.

Claims 29 and 30 were rejected under 35 U.S.C. §103(a) as being unpatentable over

Zeller et al. ('954) or Zeller et al. ('377) as applied to claims 4 and 1 above and further in view of Whipp, U.S. Patent No. 5,531,424. Reconsideration of the rejection is respectfully requested.

Independent claim 4 has been amended to provide, in part, for, “[a] process for reducing iron ore-containing particulate material in an at least two-stage process performed in an apparatus comprising a plurality of reaction zones arranged consecutively in series and formed by a moving particulate material, the process comprising: ... removing oxygen bound to the iron ore at a maximum maintained reduction speed of 0.2% oxygen removal per minute in the first particulate pathway reaction zone, adjusting the temperature level in the first particulate pathway reaction zone to be between 350° and 550°C, and maintaining an average retention time for the particulate material in the first particulate pathway reaction zone of up to forty minutes.” Since the subject matter of claims 13, 14, and 27, directly or indirectly dependent upon independent claim 4, has been incorporated into independent claim 4 by amendment, claims 13, 14, and 27 have been canceled, without prejudice or disclaimer.

It is respectfully submitted that Zeller et al., U.S. Patent No. 6,336,954 is disqualified from being used in a rejection under 35 U.S.C. §103(a) against the claims of Application No. 10/813,140, pursuant to 35 U.S.C. §103(c)(1), since

Application No. 10/813,140, and Zeller et al., U.S. Patent No. 6,336,954, were, at the time the invention of Application No. 10/813,140 was made, owned by Voest-Alpine Industrieanlagenbau GmbH & Co., also known as Voest-Alpine Industrieanlagenbau GmbH,

and since a certified English translation of the Austrian priority document herein, Austrian Patent Application No. A 1533/2001, filed on September 27, 2001, is filed herewith, thereby eliminating the availability of Zeller et al., U.S. Patent No. 6,336,954, as a 35 U.S.C. §102(a) reference, and thereby causing Zeller et al., U.S. Patent No. 6,336,954, to be available as a 35 U.S.C. §102(e) reference only, pursuant to 35 U.S.C. §103(c)(1).

With regard to Zeller et al., U.S. Patent No. 6,569,377, since the filing date of the priority document herein is September 27, 2001, prior to January 15, 2002, the effective date of Zeller et al., U.S. Patent No. 6,569,377, Zeller et al., U.S. Patent No. 6,569,377, should be withdrawn as a reference.

Since each of claims 1-3, 5-10, and 11-39 are directly or indirectly dependent upon independent claim 4, each of claims 1-3, 5-10, and 11-39 is allowable over Zeller et al. ('954) or Zeller et al. ('377) for the same reasons recited above with respect to the allowability of independent claim 4 over Zeller et al. ('954) or Zeller et al. ('377).

With regard to Meissner et al., Whipp ('424), and Whipp ('251), none of these references teaches, discloses, or suggests the above-referred to features of independent claim 4, and, thus, of dependent claims 11, 12, 27, 28, 29, and 30.

Claims 4, 8, 10, 18, 21, 22, 24, 26, and 32 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 9, 10, and 17 of Zeller et al. ('954). Reconsideration of the rejection is respectfully requested.

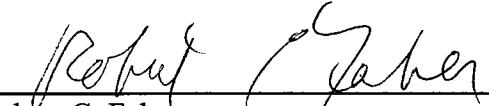
Since claims 13, 14, and 27 were not rejected on the ground of nonstatutory obviousness-type double patenting, and since the subject matter of those claims has been incorporated in independent claim 4 by amendment, it is respectfully submitted that independent claim 4, and claims 8, 10, 18, 21, 22, 24, 26, and 32, dependent upon independent claim 4, now overcome the obviousness-type double patenting rejection.

In view of the foregoing amendments and remarks, allowance of claims 1-12, 17-26, and 28-39 is respectfully requested.

Respectfully submitted,

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